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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,287

12/03/2003

Scott W. Sanders

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EXAMINER

STIGELL, THEODORE J

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

11/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/727,287

Applicant(s)

SANDERS, SCOTT W.

Examiner

Theodore J. Stigell

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 9-12, 14-15, 17-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13, 16, 19, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

***Claim Rejections - 35 USC § 112***

The 35 USC 112, 2<sup>nd</sup> paragraph rejections have been withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, 13, 16, 19, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Moorhead (6,478,783). Moorehead discloses an implantable access port comprising a housing (18) comprising a fluid chamber in fluid communication with an access aperture and a septum (20) covering the access aperture, a port stem (32) extending from the housing, including a channel (76) in fluid communication with the fluid chamber and a catheter retention feature (distal 80), and a visual indicator marking (proximal 80) disposed on the port stem distal of an outer edge of the housing and proximal of the catheter retention feature, the visual indicator marking distinct from the catheter retention feature, wherein the marking is positioned on the port stem a sufficient distance from the housing outer edge to prevent a catheter proximal end aligned with the marking and compressed by a locking sleeve from abutting the housing outer edge (the locking sleeve is only functionally claimed). It is the examiner's position that Moorehead discloses the methods recited by the applicant.

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Claims 1-8, 13, 16, 19, and 21 rejected under 35 U.S.C. 102(b) as being anticipated by Watson (5,137,529). Watson discloses an implantable access port comprising a housing (12) comprising a fluid chamber in fluid communication with an access aperture and a septum (20) covering the access aperture, a port stem (62) extending from the housing, including a channel (64) in fluid communication with the fluid chamber and a catheter retention feature (distal protrusion, not numbered), and a visual indicator marking (72) disposed on the port stem distal of an outer edge of the housing and proximal of the catheter retention feature, the visual indicator marking distinct from the catheter retention feature, wherein the marking is positioned on the port stem a sufficient distance from the housing outer edge to prevent a catheter proximal end aligned with the marking and compressed by a locking sleeve from abutting the housing outer edge (the locking sleeve is only functionally claimed), and wherein the marking comprises contrast material (column 7, lines 27-30). It is the examiner's position that Watson discloses the methods recited by the applicant.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moorehead (6,478,783) or Watson et al. (5,137,529) in view of Wiita et al. (4,772,270). Moorehead and Watson disclose all of the limitations recited in claim 21, but fail to teach to include the act of placing a locking sleeve over the port stem and catheter. Wiita discloses an implantable pump system in which a locking sleeve (130) is placed over the catheter and port stem to secure the attachment between the catheter and port stem. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the devices and methods of Moorehead or Watson with the locking sleeve of Wiita to secure the attachment between the catheter and port stem.

### ***Response to Arguments***

Applicant's arguments filed 9/19/2007 have been fully considered but they are not persuasive.

In regards to the applicant's argument that Moorhead does not disclose a marking and retention feature that are distinct, the examiner respectfully disagrees. The proximal barb and the distal barb are not integrally formed with each other and are clearly offset from each other. It is clear from the drawings that they are separate structures and are distinct from each other.

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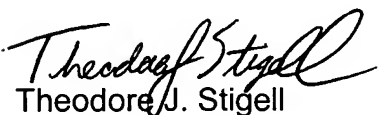
The applicant's arguments over Watson are moot in view of the grounds of rejection.


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Theodore J. Stigell

  
NICHOLAS LUCCHESI  
SUPERVISOR  
TECHNICAL EXAMINER  
THEODORE J. STIGELL 3763